

REFERENCE TITLE: employer sanctions; complaints

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HB 2343

Introduced by
Representatives Konopnicki, Pancrazi, Ulmer, Senators O'Halleran: Aguirre,
Allen, Arzberger, Flake

AN ACT

AMENDING SECTIONS 23-211 AND 23-212, ARIZONA REVISED STATUTES; RELATING TO
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-211, Arizona Revised Statutes, is amended to
3 read:

4 23-211. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Agency" means any agency, department, board or commission of this
7 state or a county, city or town that issues a license for purposes of
8 operating a business in this state.

9 2. "Basic pilot program" means the basic employment verification pilot
10 program as jointly administered by the United States department of homeland
11 security and the social security administration or its successor program.

12 3. "Employee" means any person who performs employment services for an
13 employer pursuant to an employment relationship between the employee and
14 employer.

15 4. "Employer" means any individual or type of organization that
16 transacts business in this state, that has a license issued by an agency in
17 this state and that employs one or more individuals who perform employment
18 services in this state. Employer includes this state, any political
19 subdivision of this state and self-employed persons.

20 5. "FALSE COMPLAINT" MEANS MAKING A COMPLAINT WITH BELIEF OR KNOWLEDGE
21 THAT THE INFORMATION CONTAINED AND PROVIDED IN THE COMPLAINT IS, IN WHOLE OR
22 PART, ERRONEOUS, UNFOUNDED OR IN ANYWAY NOT ACCURATE.

23 6. "FRIVOLOUS COMPLAINT" INCLUDES ANY COMPLAINT IN WHICH THE FACTS
24 ALLEGED BY THE COMPLAINANT ARE CLEARLY INSUFFICIENT TO RENDER THE COMPLAINT
25 MANIFESTLY UNFOUNDED, ABUSIVE OR WITHOUT MERIT OR ANY COMPLAINT THAT IS BASED
26 SOLELY ON RELIGION, COLOR, LANGUAGE, CITIZENSHIP, NATIONALITY, ETHNICITY OR
27 GENDER.

28 ~~5-~~ 7. "Intentionally" has the same meaning prescribed in section
29 13-105.

30 ~~6-~~ 8. "Knowingly employ an unauthorized alien" means the actions
31 described in 8 United States Code section 1324a. This term shall be
32 interpreted consistently with 8 United States Code section 1324a and any
33 applicable federal rules and regulations.

34 ~~7-~~ 9. "License":

35 (a) Means any agency permit, certificate, approval, registration,
36 charter or similar form of authorization that is required by law and that is
37 issued by any agency for the purposes of operating a business in this state.

38 (b) Includes:

39 (i) Articles of incorporation under title 10.

40 (ii) A certificate of partnership, a partnership registration or
41 articles of organization under title 29.

42 (iii) A grant of authority issued under title 10, chapter 15.

43 (iv) Any transaction privilege tax license.

44 (c) Does not include:

45 (i) Any license issued pursuant to title 45 or 49 or rules adopted
46 pursuant to those titles.

1 (ii) Any professional license.
2 ~~8-~~ 10. "Unauthorized alien" means an alien who does not have the
3 legal right or authorization under federal law to work in the United States
4 as described in 8 United States Code section 1324a(h)(3).

5 Sec. 2. Section 23-212, Arizona Revised Statutes, is amended to read:
6 23-212. Employment of unauthorized aliens; prohibition; false
7 or frivolous complaints; violation; classification;
8 license suspension and revocation; affirmative
9 defense

10 A. An employer shall not intentionally employ an unauthorized alien or
11 knowingly employ an unauthorized alien.

12 B. On receipt of a SIGNED VERIFIED WRITTEN complaint that an employer
13 allegedly intentionally employs an unauthorized alien or ALLEGEDLY knowingly
14 employs an unauthorized alien, the attorney general or county attorney shall
15 investigate whether the employer has violated subsection A AND DETERMINE IF
16 THE COMPLAINT IS VALID. THE COMPLAINT SHALL CONTAIN, AT A MINIMUM, THE
17 FOLLOWING:

- 18 1. THE FULL NAME OF THE COMPLAINANT.
- 19 2. A PHYSICAL ADDRESS. IF A PHYSICAL ADDRESS IS NOT AVAILABLE, A
20 DESCRIPTION OF THE COMPLAINANT'S RESIDENCE.
- 21 3. A METHOD BY WHICH THE COMPLAINANT CAN BE REACHED.
- 22 4. A STATEMENT OF FACTS THAT PROVIDES THE BASIS FOR THE COMPLAINT,
23 INCLUDING THE NAME AND DESCRIPTION OF THE EMPLOYER AND ALLEGED UNAUTHORIZED
24 ALIEN WHO IS EMPLOYED BY THE EMPLOYER.

25 C. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE A
26 COMPLAINT THAT IS BASED SOLELY ON RELIGION, COLOR, LANGUAGE, CITIZENSHIP,
27 NATIONALITY, ETHNICITY OR GENDER. When investigating a complaint, the
28 attorney general or county attorney shall verify the work authorization of
29 the alleged unauthorized alien with the federal government pursuant to 8
30 United States Code section 1373(c). A state, county or local official shall
31 not attempt to independently make a final determination on whether an alien
32 is authorized to work in the United States. An alien's immigration status or
33 work authorization status shall be verified with the federal government
34 pursuant to 8 United States Code section 1373(c). A person who knowingly
35 files a false ~~and~~ COMPLAINT OR A frivolous complaint under this subsection is
36 guilty of a class ~~3-~~ 1 misdemeanor.

37 ~~6-~~ D. If, after an investigation, the attorney general or county
38 attorney determines that the complaint is not frivolous:

- 39 1. The attorney general or county attorney shall notify the United
40 States immigration and customs enforcement of the unauthorized alien.
- 41 2. The attorney general or county attorney shall notify the local law
42 enforcement agency of the unauthorized alien.
- 43 3. The attorney general shall notify the appropriate county attorney
44 to bring an action pursuant to subsection ~~D-~~ E if the complaint was
45 originally filed with the attorney general.

1 ~~D.~~ E. An action for a violation of subsection A shall be brought
2 against the employer by the county attorney in the county where the
3 unauthorized alien employee is employed. The county attorney shall not bring
4 an action against any employer for any violation of subsection A that occurs
5 before January 1, 2008. A second violation of this section shall be based
6 only on an unauthorized alien who is employed by the employer after an action
7 has been brought for a violation of subsection A.

8 ~~E.~~ F. For any action in superior court under this section, the court
9 shall expedite the action, including assigning the hearing at the earliest
10 practicable date.

11 ~~F.~~ G. On a finding of a violation of subsection A:

12 1. For a first violation during a three year period that is a knowing
13 violation of subsection A, the court:

14 (a) Shall order the employer to terminate the employment of all
15 unauthorized aliens.

16 (b) Shall order the employer to be subject to a three year
17 probationary period. During the probationary period the employer shall file
18 quarterly reports with the county attorney of each new employee who is hired
19 by the employer at the specific location where the unauthorized alien
20 performed work.

21 (c) Shall order the employer to file a signed sworn affidavit with the
22 county attorney within three business days after the order is issued. The
23 affidavit shall state that the employer has terminated the employment of all
24 unauthorized aliens and that the employer will not intentionally or knowingly
25 employ an unauthorized alien. The court shall order the appropriate agencies
26 to suspend all licenses subject to this subdivision that are held by the
27 employer if the employer fails to file a signed sworn affidavit with the
28 county attorney within three business days after the order is issued. All
29 licenses that are suspended under this subdivision shall remain suspended
30 until the employer files a signed sworn affidavit with the county attorney.
31 Notwithstanding any other law, on filing of the affidavit the suspended
32 licenses shall be reinstated immediately by the appropriate agencies. For
33 the purposes of this subdivision, the licenses that are subject to suspension
34 under this subdivision are all licenses that are held by the employer and
35 that are necessary to operate the employer's business at the employer's
36 business location where the unauthorized alien performed work. If a license
37 is not necessary to operate the employer's business at the specific location
38 where the unauthorized alien performed work, but a license is necessary to
39 operate the employer's business in general, the licenses that are subject to
40 suspension under this subdivision are all licenses that are held by the
41 employer at the employer's primary place of business. On receipt of the
42 court's order and notwithstanding any other law, the appropriate agencies
43 shall suspend the licenses according to the court's order. The court shall
44 send a copy of the court's order to the attorney general and the attorney
45 general shall maintain the copy pursuant to subsection ~~G.~~ H.

1 (d) May order the appropriate agencies to suspend all licenses
2 described in subdivision (c) of this paragraph that are held by the employer
3 for not to exceed ten business days. The court shall base its decision to
4 suspend under this subdivision on any evidence or information submitted to it
5 during the action for a violation of this subsection and shall consider the
6 following factors, if relevant:

7 (i) The number of unauthorized aliens employed by the employer.

8 (ii) Any prior misconduct by the employer.

9 (iii) The degree of harm resulting from the violation.

10 (iv) Whether the employer made good faith efforts to comply with any
11 applicable requirements.

12 (v) The duration of the violation.

13 (vi) The role of the directors, officers or principals of the employer
14 in the violation.

15 (vii) Any other factors the court deems appropriate.

16 2. For a first violation during a five year period that is an
17 intentional violation of subsection A, the court shall:

18 (a) Order the employer to terminate the employment of all unauthorized
19 aliens.

20 (b) Order the employer to be subject to a five year probationary
21 period. During the probationary period the employer shall file quarterly
22 reports with the county attorney of each new employee who is hired by the
23 employer at the specific location where the unauthorized alien performed
24 work.

25 (c) Order the appropriate agencies to suspend all licenses ~~—~~ described
26 in subdivision (d) of this paragraph that are held by the employer for a
27 minimum of ten days. The court shall base its decision on the length of the
28 suspension under this subdivision on any evidence or information submitted to
29 it during the action for a violation of this subsection and shall consider
30 the following factors, if relevant:

31 (i) The number of unauthorized aliens employed by the employer.

32 (ii) Any prior misconduct by the employer.

33 (iii) The degree of harm resulting from the violation.

34 (iv) Whether the employer made good faith efforts to comply with any
35 applicable requirements.

36 (v) The duration of the violation.

37 (vi) The role of the directors, officers or principals of the employer
38 in the violation.

39 (vii) Any other factors the court deems appropriate.

40 (d) Order the employer to file a signed sworn affidavit with the
41 county attorney. The affidavit shall state that the employer has terminated
42 the employment of all unauthorized aliens and that the employer will not
43 intentionally or knowingly employ an unauthorized alien. All licenses that
44 are suspended under this subdivision shall remain suspended until the
45 employer files a signed sworn affidavit with the county attorney. For the
46 purposes of this subdivision, the licenses that are subject to suspension

1 under this subdivision are all licenses that are held by the employer and
2 that are necessary to operate the employer's business at the employer's
3 business location where the unauthorized alien performed work. If a license
4 is not necessary to operate the employer's business at the specific location
5 where the unauthorized alien performed work, but a license is necessary to
6 operate the employer's business in general, the licenses that are subject to
7 suspension under this subdivision are all licenses that are held by the
8 employer at the employer's primary place of business. On receipt of the
9 court's order and notwithstanding any other law, the appropriate agencies
10 shall suspend the licenses according to the court's order. The court shall
11 send a copy of the court's order to the attorney general and the attorney
12 general shall maintain the copy pursuant to subsection ~~G~~ H.

13 3. For a second violation of subsection A during the period of
14 probation, the court shall order the appropriate agencies to permanently
15 revoke all licenses that are held by the employer and that are necessary to
16 operate the employer's business at the employer's business location where the
17 unauthorized alien performed work. If a license is not necessary to operate
18 the employer's business at the specific location where the unauthorized alien
19 performed work, but a license is necessary to operate the employer's business
20 in general, the court shall order the appropriate agencies to permanently
21 revoke all licenses that are held by the employer at the employer's primary
22 place of business. On receipt of the order and notwithstanding any other
23 law, the appropriate agencies shall immediately revoke the licenses.

24 ~~G~~ H. The attorney general shall maintain copies of court orders that
25 are received pursuant to subsection ~~F~~ G and shall maintain a database of the
26 employers who have a first violation of subsection A and make the court
27 orders available on the attorney general's website.

28 ~~H~~ I. On determining whether an employee is an unauthorized alien,
29 the court shall consider only the federal government's determination pursuant
30 to 8 United States Code section 1373(c). The federal government's
31 determination creates a rebuttable presumption of the employee's lawful
32 status. The court may take judicial notice of the federal government's
33 determination and may request the federal government to provide automated or
34 testimonial verification pursuant to 8 United States Code section 1373(c).

35 ~~I~~ J. For the purposes of this section, proof of verifying the
36 employment authorization of an employee through the basic pilot program
37 creates a rebuttable presumption that an employer did not intentionally
38 employ an unauthorized alien or knowingly employ an unauthorized alien.

39 ~~J~~ K. For the purposes of this section, an employer who establishes
40 that it has complied in good faith with the requirements of 8 United States
41 Code section 1324b establishes an affirmative defense that the employer did
42 not intentionally or knowingly employ an unauthorized alien.